IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 20.04.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
And
The Hon'ble Mr. Justice J.A.K.SAMPATHKUMAR

Writ Appeal No.1692 of 1999

1. Tamil Nadu Electricity Board
Represented by its Chairman,
Power Avenue,
800, Anna Salai,
Chennai-600 002.

2. The Chief Engineer/Personnel,
Tamil Nadu Electricity Board,
Electricity Avenue,
800, Anna Salai,
Chennai-600 002. .. Appellants/Respondents

vs.

Tamil Nadu Electricity Board
Thozhilalar Aykkiya Sangam,
Registration No.956/MDS,
Represented by its General Secretary
M.Subramanian. .. Respondents/Petitioner

Appeal under Clause 15 of the Letters Patent against the order, dated 26.2.1999, made by the learned single Judge (PDDJ) in W.P. No.3314 of 1993. Presented under Article 226 of the Constitution of India to issue a Writ of Declaration declaring note 3 to the clause provided for recruitment to Division VII C (Accounts Cadre in Offices of Circles and Board Office Accounts Branch) under Annexure - 1, framed under Regulation 92 of the Tamil Nadu Electricity Board Service Regulations to be ultra vires as offending Articles 14 and 16 of the Constitution of India and Consequently hold the recruitment for internal selection Visualised under letter No. 00614/R/II/92-3, dated 29.12.1992 to be illegal and void.

For Appellants : Mr.V.Radhakrishnan
For Respondent : Mr.D.Hariparanthaman

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J U D G M E N T

The Chairman and the Chief Engineer/Personnel, Tamil Nadu Electricity Board, Chennai, aggrieved by the order of the learned single Judge, dated 26.02.1999, made in W.P. No.3314 of 1993, have preferred the above Writ Appeal.

2. The respondent herein/Writ Petitioner, viz., Tamil Nadu Electricity Board Thozhilalar Aykkiya Sangam, represented by its General Secretary, filed Writ Petition No.3314 of 1993 for the issuance of a writ of declaration to declare note 3 to the clause provided for recruitment to Division VII C (Accounts Cadre in Offices of Circles and Board Office Accounts Branch) under Annexure-1, framed under Regulation 92 of the Tamil Nadu Electricity Board Service Regulations, to be ultra vires as offending Articles 14 and 16 of the Constitution of India and consequently hold the recruitment for internal selection visualized under letter No.00614/R/II/92-3, dated 29.12.1992, to be illegal and void.

3. According to the writ petitioner/respondent herein, note 3 appended to Regulation 92 of the Tamil Nadu Electricity Board Service Regulations is violative of Articles-14 and 16 of the Constitution of India. It is their grievance that classification of candidates, holding I.T.I. Certificates and who have got National Trade Certificate/National Apprenticeship Certificate (NTC/NAC) and recruited as Helpers in Regular Works Establishment (REW) as distinct Class, is not based on any intelligible differentia, which has rational nexus to the objective of selection to the post of Junior Assistant/Assessors, etc. It is also their grievance that in view of the above mentioned note-3, the members of their Association are debarred from applying for the post of Junior Assistant along with other similarly placed candidates, possessing lesser qualification.

4. It is the stand of the Electricity Board that, after taking note of the technical qualification, viz., National Trade Certificate/National Apprenticeship Certificate, the Board ordered that the candidates with NTC/NAC, recruited as Helpers, shall not be eligible for internal selection to the post of Junior Assistant and Typist including Steno-Typist. It is also the stand of the Electricity Board that the nature of work and channel of promotions to the Helpers in Regular Works Establishment is entirely different from that of Junior Assistant/Typist/Assessors. According to them, the Helpers are utilized for field work of technical nature and their channel of promotion is Wireman, Lineman, Foreman and Junior Engineer. Whereas, Junior Assistants are posted for clerical works in office in Administrative and Accounts Cadre and their channel of promotion is Assistant, Administrative/Accounts Supervisor and Assistant Administrative Officer/Assistant Accounts

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Officer. In view of such position, according to the Board, the Helpers, who have been appointed by virtue of their possessing NTC/NAC will have no right to apply for the post of Junior Assistant/Typist/Assessor.

5. Learned single Judge, after finding that there is no classification among the Helpers / Officer Helpers as technical and non-technical and that debarring more qualified persons such as NTC/NAC holders would amount to discrimination, violative of Articles 14, 16 and 19(1)(g) of the Constitution of India; accepted the Sangam's stand and allowed the Writ Petition, hence, the present Writ Appeal at the instance of the Electricity Board.

6. Heard Mr.V.Radhakrishnan, learned counsel for the appellants and Mr.D.Hariparanthaman, learned counsel for the respondent.

7. In order to appreciate the stand taken by both the parties, it is useful to refer note-3 appended to Regulation-92, which reads as follows:-

> " NOTE 3:
>
> National Trade Certificate/National Apprenticeship Certificate candidates recruited as Helpers shall not be eligible for internal selection to the post of Junior Assistant and typists including steno-typists. "

8. It is not in dispute that persons having technical qualification by way of holding NTC/NAC Certificate were recruited as Helpers and by virtue of note-3, they are not eligible for internal selection to the posts of Junior Assistant and Typist including Steno-Typist. It is the stand of the Electricity Board that before 1997, that is, prior to formation of Administrative/Accounts Cadre, there was one wing, i.e., Junior Assistant, Assistant and Accountant. Subsequently, a separate cadre has been formed as per B.P.Ms.(FB) No.62 (Secretariat Branch) dated 23.7.1987 and there are two separate categories, i.e., Administrative and Accounts Cadre and persons are recruited separately for Administrative as well as Accounts Cadre and it is not interchangeable. It is also the stand of the Board that the nature of work and channel of promotion to the Helpers in Regular Works Establishment is entirely different from that of Junior Assistant/Typist/Assessors. According to them, the Helpers are utilized for field work of technical nature and their channel of promotion is Wireman, Lineman, Foreman and Junior Engineer. On the other hand, Junior Assistants are posted for clerical works in the Administrative and Accounts cadre and their Channel of Promotion is Assistant, Administrative/Accounts Supervisor and Assistant Administrative Officer/Assistant Accounts Officer. It is stated that the persons holding NTC/NAC were recruited for strengthening the technical base in the lower level.

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9. It has to be noted that in spite of the request made by this Court, the Board has not placed the relevant Rules or Regulations, providing separate channel of promotion in respect of persons having such technical qualification (NTC/NAC). As rightly pointed out by the learned Judge, in the Service Regulations, we do not find any classification among the Helpers/Office Helpers as technical and non-technical. In other words, the Service Regulations show that the Helpers, who possess minimum qualification of S.S.L.C. or Matric or equivalent qualification and who hold I.T.I. Certificate with NT & NA Certificate, are treated as a single class, in such circumstances, as rightly pointed out by the learned Judge, they are eligible for promotion both for technical or non-technical posts. It is true that persons having technical qualification, holding NTC/NAC, are required for technical work. However, as pointed out above, the Board did not place before us the Service Regulations, classifying the persons in the cadre of Helpers as technical and non-technical. In the absence of such provision, as rightly pointed out by Mr.D.Hariparanthaman, learned counsel for the Tholilalar Sangam, because of the impugned note, persons holding ITI Certificate with NTC/NAC (undoubtedly higher qualification) are not considered for the post of Junior Assistant, however, those having lesser qualification are being considered for the said post. To put it clear, if there is a separate provision in the Service Regulations, treating the above Certificate Holders as workers under Technical Category and making it clear that in the matter of promotion preference would be given to them on technical side, then, there will not be any difficulty in upholding note-3 and debarring those persons from being considered for the post of Junior Assistant. This aspect has been elaborately dealt with by the learned Judge by relying on several decisions of the Apex Court. We are in entire agreement with the conclusion arrived at by the learned Judge.

10. Learned counsel appearing for the appellants/Board heavily relied on a Division Bench decision of this Court reported in 2005 (2) L.L.N. 516 (T.N.E.B. vs. Bharathiya Electricity Employees Federation) and contended that Note-3 being determination of conditions of service, promotion etc., the scope of judicial review with regard to the same is very limited and the learned Judge ought not to have interfered with. We verified the decision of the Division Bench. In view of our discussion and of the fact that there is no service Regulation, classifying among the Helpers / Office Helpers as technical and non-technical, and in the absence of any Rule, providing separate channel of promotion to the persons holding NTC/NAC, we are of the view that the said decision is not applicable to the case on hand. As observed earlier, we, even after reserving the matter for orders, sought clarification from the Board with regard to extent of such provision in the Service Regulations. Though certain Board's proceedings have been placed before us, there is no specific Rule/Regulation, providing classification among the Helpers/Office Helpers as technical and non-technical. In such circumstances, we hold that note-3 of Division VII C of Annexure I framed

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under Regulation 92 of the Service Regulations of the Board is violative of Articles 14, 16 and 19 (1) (g) of the Constitution of India.

11. In such circumstances, we do not find any error or infirmity in the order of the learned single Judge. Consequently, the Writ Appeal fails and the same is dismissed. No costs.

JI.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Chairman,
   Tamil Nadu Electricity Board,
   Power Avenue,
   800, Anna Salai,
   Chennai - 600 002.

2. The Chief Engineer/Personnel,
   Tamil Nadu Electricity Board,
   Electricity Avenue,
   800, Anna Salai,
   Chennai - 600 002.

+ One cc to Mr D.Hariparanthaman, Advocate SR No.19991

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